

1 IN THE UNITED STATES DISTRICT COURT.
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FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

4 BARBARA A. WILHELM, :
5 Plaintiff :
6 v. : Case 01-CV-1057
7 COMMONWEALTH OF PENNSYLVANIA, :
8 PENNSYLVANIA STATE POLICE, :
9 et al., :
10 Defendants

11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
TRANSCRIPT OF PROCEEDINGS

OPENING STATEMENTS
AND CLOSING ARGUMENTS

BEFORE: HON. SYLVIA H. RAMBO, Judge
DATES: September 9, 2002
September 11, 2002
PLACE: Courtroom Number Three
Federal Building
Harrisburg, Pennsylvania

COUNSEL PRESENT:

NATHAN C. PRINGLE, JR., Esquire
For - Plaintiff

SUSAN J. FORNEY, Esquire
For - Defendants

FILED
HARRISBURG, PA

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MARY E. ANN MCCAULEY, CLERK
Per A. Fox Deputy Clerk

Vicki L. Fox, RMR
Official Reporter

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Plaintiff's Opening

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1 THE COURT: You may make an opening statement.

2 MR. PRINGLE: Thank you, Your Honor. Good
3 morning. My name is Nathan Pringle. I represent the
4 Plaintiff Barbara Wilhelm in this case.

5 We met last week, and I want to again thank you
6 for being here and participating in this process. This is
7 very important to me and my client.

8 The case before you is fairly simple. I want to
9 apologize at the outset. It is not going to be sexy. It is
10 not going to be a lot of fun, but it is important. It
11 affects Barbara Wilhelm's life.

12 What this case is simply about is her claim that
13 she was retaliated against for filing sex discrimination
14 charges. We are going to present evidence regarding her
15 background. We are going to explain to you -- I am going to
16 have Ms. Wilhelm explain to you that she was a long time
17 State employe at the time of her termination. That is what
18 is involved here. She had over 21 years of service.

19 She is going to give you a lot of details. It
20 may sound unimportant or uninteresting to you, but it is
21 very important. It is a backdrop for the entire case.

22 So I am asking you to please listen to the
23 evidence. Listen to the evidence as it is presented to you
24 as the Judge said. The background she is going to give you
25 is that she is a college graduate of York College, that she

Plaintiff's Opening

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1 has a degree in -- a bachelor's degree in Police Science,
2 and that she became a Police Officer, a Capitol Police
3 Officer with the State of Pennsylvania, that she worked
4 there for a number of years.

5 She will testify that her performance in that job
6 was excellent, and that it was recognized throughout the
7 Commonwealth as being excellent. So much so that she
8 received many offers for positions.

9 One of those offers was with the Governor's
10 Office of Inspector General. That Office deals with
11 inspections of violations of the law, of abuses and ways
12 within state government affecting all state agencies under
13 the Governor's jurisdiction.

14 She will then explain to you she took a position
15 that she eventually did so well in her job that she got
16 supervisory responsibilities. And it was also recognized
17 that it was appropriate for her to act as Acting Director of
18 the Capitol Police for a period of time.

19 Eventually, she went back to the Inspector
20 General's Office, continued as a supervisor being
21 responsible for field offices in Philadelphia, the Central
22 Office in Harrisburg and the field office in Pittsburgh.

23 She continued to receive job offers because it
24 was recognized that her performance was excellent. One of
25 those job offers was with the Pennsylvania State Police.

Plaintiff's Opening

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1 She took that one. This is where we believe her problems
2 started.

3 She worked for the -- we are going to show
4 through her testimony that she worked through the Bureau of
5 Criminal Investigation as an intelligence analyst. From
6 there because her performance was excellent and recognized
7 even by the Commissioner as excellent, she was offered a
8 position within the Legislative Affairs Office.

9 We are going to have the Director -- former
10 Director of that Office Richard Morris at that time she was
11 -- Major Richard Morris testify as to what the function of
12 that Legislative Office was. Generally, I would say you
13 will hear testimony that it functioned as a representative
14 for the Pennsylvania State Police within our State
15 Legislature.

16 That Office also included staff of a policy
17 analyst and an Assistant Director by the name of Captain
18 Michael Simmers. As I said before, this case is about
19 retaliation. And what we have to show you -- and the Judge
20 will give you instructions on this -- what we have to show
21 you is that she made claims of retaliation to various
22 parties.

23 We will show you that she made various claims of
24 retaliation, that she made various claims of discrimination.
25 We will show you that she made various claims of

Plaintiff's Opening

6

1 discrimination with respect to how she was treated in that
2 Office.

3 We will show you that she contacted her Director
4 Richard Morris and repeatedly told him that she was treated
5 as a second class citizen merely because she was a female.

6 Specifically, she will say that she was treated
7 as a second class citizen merely because of the fact of them
8 having her do filing work, clerical work merely because she
9 was the only woman in the office. She will also testify
10 that during her tenure in that office, her male counterparts
11 were free to come and go in the office and were not held
12 accountable for their time in the office. In contrast
13 because she was a woman in the office, she was held
14 accountable for her time.

15 She will also raise some other issues of
16 discrimination, but I want you to focus on those main parts.

17 You will not hear evidence as to whether or not
18 she was actually discriminated against. A fine distinction
19 here. We will only present evidence that she claims she was
20 discriminated against, and she presented that to the
21 appropriate parties.

22 She will not present evidence of discrimination.
23 We are not here to determine whether or not she was actually
24 discriminated against, only if she brought claims.

25 We will present evidence that she presented these

Plaintiff's Opening

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1 claims to her Director Richard Morris, that she also
2 presented claims of discrimination to the Bureau of
3 Professional Responsibility within the Pennsylvania State
4 Police. That Bureau contains the Internal Affairs Division
5 and the Systems and Process Review Division. She will
6 present evidence that she made claims to both.

7 We will also present evidence from her Director
8 that he filed a claim on her behalf to the Internal Affairs
9 Division.

10 We will show additional evidence that she
11 presented specific claims to the Systems and Process Review
12 Division which is again part of the Bureau of Professional
13 Responsibility.

14 She also notified Colonel Paul Evanko, the
15 Commissioner for the State Police, that she was making these
16 claims. She also notified the Director for Equal Employment
17 Opportunity within the Pennsylvania State Police that she
18 was making these claims. Her name is Virginia Elliot Smith,
19 Major Virginia Elliot Smith.

20 Part of what we have to prove here is that as a
21 result of her filing these claims, some adverse employment
22 action occurred. As I indicated to you earlier, our
23 assertion will be that the termination -- the termination of
24 her employment is that adverse action.

25 Obviously, we get to present our case. The other

Plaintiff's Opening

8

1 side gets to present their case. We think there was an
2 adverse employment action because of this. They are going
3 to say there was not.

4 So in anticipation that they will present a
5 reason that they believe is legitimate nondiscriminatory
6 evidence, we will present you with other evidence to show
7 that in fact their reason was a pretext, a subterfuge, not
8 the real reason.

9 We will present you with evidence. They will
10 present you we believe with evidence that they reorganized
11 the Office, that they replaced Ms. Wilhelm with a clerical
12 person, and that there was a business necessity for doing
13 that.

14 We will show you that there was no business
15 necessity for doing that. This was convenient on their
16 part, a convenient means by which to get rid of Ms. Wilhelm.

17 We will also show you that as a direct result of
18 her being terminated and the means by which they terminated
19 her, it adversely affected her future employment
20 opportunities.

21 We will show you that they deliberately wrote in
22 her personnel records and designated a code which was
23 derogatory, and that code could be accessed by other
24 Pennsylvania hiring managers. We will show you that as a
25 direct result of that, Ms. Wilhelm was not able to get other

Defendants' Opening

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1 employment with the Commonwealth.

2 We will show you other damages. Obviously, we
3 will show you that there were monetary damages in that she
4 lost income from this job. And we will show you she was not
5 able to get any other employment despite her valiant efforts
6 to do so.

7 At the end of this case, the Judge is going to
8 give you jury instructions. I am going to come back to you
9 and give you a closing argument as to why you should find
10 for my client. Thank you very much.

11 THE COURT: Ms. Forney?

12 MS. FORNEY: Good morning ladies and gentlemen.
13 My name is Susan Forney. We met at jury selection. I work
14 for the Attorney General's Office, and I am here this
15 morning to represent the State Police, who is the defendant
16 in this case.

17 As Mr. Pringle told you, the question that you
18 are going to be presented with at the end of the day is why
19 was the Plaintiff dismissed from the State Police. She was
20 not dismissed because she complained about sex
21 discrimination. She was dismissed because her boss
22 recommended that his Office be reorganized to eliminate her
23 position and to convert that position into a clerical spot.
24 And she was dismissed because there was no other vacant
25 position that she could fill within the State Police.

Defendants' Opening

10

1 Now her boss recommended reorganization of the
2 office really for two reasons. He was relatively new in the
3 position. And as he familiarized ed himself with the
4 operation of the Office, he realized he needed clerical
5 support, and there was nobody in the office who was
6 specifically assigned to do that job.

7 The other reason that he decided he wanted to
8 reorganize the Office was that the Plaintiff made it very
9 clear to him that she was unwilling to communicate openly
10 with other members of the staff of the State Police that
11 were involved in the work of the Office where she worked,
12 and he was very concerned about that.

13 Now what will the evidence show? The evidence
14 will show that the events leading up to her dismissal were
15 as follows: Ms. Wilhelm began to work for the State Police
16 Office of Legislative Affairs in January of 1998. After she
17 had worked there about two years, the Director of that
18 Office Major Richard Morris retired. That was in about
19 January of 2000.

20 It took six to eight weeks to identify his
21 successor in that position. That successor was Captain
22 Jeffrey Miller, who is now Major Jeffrey Miller, who is
23 seated at counsel table.

24 Captain Miller spent some time familiarizing
25 himself with the work of the Office of Legislative Affairs

Defendants' Opening

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1 while he was wrapping up responsibilities he had with his
2 prior job. During that period, he became concerned that the
3 Office didn't have any clerical support, and he presented a
4 couple of different proposals, floated a couple of ideas
5 about how that might be resolved. One of those ideas was to
6 bring in a new clerical position.

7 He wasn't allowed to do that. That wasn't
8 permitted. So he continued to learn about the Office,
9 observe how employes were operating and get ready to take
10 over.

11 About a month after he was in the position of
12 Director of Legislative Affairs, an incident occurred which
13 caused him to really be concerned about the Plaintiff's
14 willingness to openly communicate with other staff members.

15 One day, the Plaintiff came into the office and
16 discovered that the voice mail system for the telephone in
17 the Office had been removed. Now this was of some concern
18 because one of the things that the Office did was to get a
19 lot of calls from legislator and their staff, and they
20 needed to respond to the various calls that came in. And,
21 of course, if the line was full, folks would leave messages.
22 The voice mail system was off.

23 She was convinced that the Director of the Policy
24 Office, a man by the name of Ronald Plesco had caused this
25 to happen. Now Mr. Plesco had previously been a co-worker

Defendants' Opening

12

1 of the Plaintiff's, and as the evidence will show there had
2 been some tension in the office earlier and some personality
3 conflicts among the people that worked there.

4 In any event, the Plaintiff informed Captain
5 Miller that Mr. Plesco was responsible for removing the
6 voice mail system from the phone. Captain Miller was out of
7 the office. He was down at the Capitol. The testimony will
8 show his job requires him to attend a lot of meetings, make
9 a lot of contact with folks. So he wasn't there when this
10 occurred.

11 When he did get back to the office, he spoke with
12 Ms. Wilhelm, and she said it was Ron Plesco who did this.
13 He looked into the situation and discovered that wasn't the
14 case.

15 A few days later, he spoke to Ms. Wilhelm and
16 said it wasn't Ron Plesco. He didn't cause this to happen.
17 Ms. Wilhelm refused to accept his explanation and did not
18 want to discuss it further. Captain Miller had some
19 concerns, however, and he wanted to talk to Ms. Wilhelm and
20 tried to talk to Ms. Wilhelm about how she might have
21 handled the situation in a different way.

22 He said that he thought it would have been better
23 had she spoken to Ron Plesco and talked to him about the
24 problem with the voice mail system to see if it could be
25 resolved. And her response was in no certain terms that she

Defendants' Opening

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1 would not speak to Ron Plesco.

2 Captain Miller was a little surprised by this
3 response. He was now confronted with the following
4 situation: He had an office that needed clerical support.
5 He had an employe who had said she wasn't willing to speak
6 to the man who was now the Director of the Policy Office in
7 the State Police. This man was someone by virtue of his
8 responsibilities that the Legislative Affairs people needed
9 to communicate with.

10 You will hear testimony that Policy and
11 Legislative Affairs are closely related, and there needs to
12 be a flow of communication there. And certainly Captain
13 Miller was concerned that there be a flow of communication.

14 What he did is he went to the Commissioner of the
15 State Police and said I would like to reorganize my office.
16 I need clerical support, and I am concerned that the
17 Plaintiff is not going to communicate the way I would like
18 her to communicate with other staff members.

19 He also said and I really need clerical support
20 more than I need the functions that the Plaintiff is doing.
21 The Commissioner authorized the reorganization.

22 You will hear evidence that the Personnel
23 Director of the State Police, a woman by the name of Linda
24 Bonney was given the job of carrying out the reorganization.
25 Now what Ms. Bonney did first was recognize that the

Defendants' Opening

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1 Plaintiff was in a job which is called an at will position.
2 That means she wasn't a civil servant, and she didn't have
3 the protection of a union contract so she didn't have the
4 right to take another job.

5 You may have heard that referred to as bumping.
6 She didn't have a right to bump into another job, and she
7 didn't have a right to be put on a recall list so that if
8 another job opened, they would call her up, and she would
9 come back.

10 What Ms. Bonney did was look to see if there were
11 other vacancies in the State Police that the Plaintiff was
12 qualified for and she was available for. She discovered
13 there was none at the time. The only option at that point
14 was to dismiss Ms. Wilhelm. And that is what happened.

15 The State Police dismissed her, and they gave her
16 a dismissal letter which explained that this was being done
17 because of the need to reorganize the Legislative Affairs
18 Office.

19 Now Mr. Pringle told you that Ms. Wilhelm was
20 dismissed because she complained about sex discrimination.
21 Did she complain about sex discrimination? She did. Once.

22 The evidence will show that on the eve of her
23 prior boss's ease retirement Major Morris' retirement, she
24 wrote him a memo in which she said I want to know what the
25 policies are for taking compensation leave in the office.

Defendants' Opening

15

1 My coworkers seem to be taking advantage of these policies,
2 and I am not. I think this is discriminatory preferential
3 treatment of the males in the office.

4 She sent that memo to Major Morris several days
5 before the effective date of his retirement. She copied in
6 the Commissioner of the State Police Paul Evanko. She
7 copies in the Equal Opportunity Officer.

8 Commissioner Evanko received that memo, and he
9 addressed it. He wrote a memo to the Interim Director of
10 the Legislative Affairs Office reiterating what the State
11 Police policy was on compensatory leave. He said this is
12 what it is. I am reinforcing this with you.

13 In addition, it looks like Ms. Wilhelm is raising
14 a complaint of sex discrimination. I want you to send this
15 memo to the appropriate agencies within the State Police,
16 the appropriate units so that it can be dealt with. That is
17 what Commissioner Evanko did.

18 The Acting Director of the Office did as
19 instructed and sent Ms. Wilhelm's memo out to the
20 appropriate units within the State Police. She was not
21 dismissed because she made a complaint about sex
22 discrimination.

23 Now what I say to you as the Judge explained is
24 not evidence. I am trying to give you a picture of the
25 Defendants' case and what you might hear in the evidence.

Defendants' Opening

16

1 The witnesses will testify. Documents will be presented.

2 And that is the evidence that you must listen to.

3 You will be hearing from Captain Miller, and he
4 will describe to you the situation he confronted in the
5 Legislative Affairs Office. Commissioner Evanko will also
6 testify about how he responded to Major Miller's concern and
7 what he did.

8 Linda Bonney, the Personnel Director, will tell
9 you how she went about implementing the reorganization. You
10 will also hear from a gentleman by the name of Richard
11 Clites, he works for another part of the Commonwealth called
12 the Office of Administration. This is the agency that
13 develops the codes that are used to describe how a person is
14 separated from the Commonwealth, and he will talk to you
15 about the code that was used in this instance and that it
16 was an appropriate code under all of the circumstances.

17 Now we will probably be presenting some
18 additional witnesses and evidence in order to respond to the
19 Plaintiff's case. And they will be other members of the
20 State Police.

21 Some of the evidence will deal with the
22 organizational structure of the State Police. It may not be
23 the most exciting evidence in the world, but we are
24 presenting it to you so that you understand how the State
25 Police operates.

Defendants' Opening

17

1 It is a paramilitary organization. It has got
2 Colonels, Captains, Lieutenants, Colonels, Majors,
3 Sergcants, Corporals. And because of that paramilitary
4 structure, its operation and its adherence to chain of
5 command, it is a little bit different than a civilian
6 employment situation might be. We will present you some
7 information about that, and also the regulations and
8 directives that govern the operation of the State Police.

9 Ladies and gentlemen, there is a very old saying
10 that there are two sides to every story. That is very true.
11 You have just heard two very different views of what went on
12 in this case.

13 Plaintiff will now have an opportunity to present
14 her evidence to you, and we will follow. I would just add
15 my request to the Court's request that you keep an open mind
16 until you have heard both sides of the story. And I think
17 if you do that, I am confident you will conclude the
18 Plaintiff was not dismissed because she complained about sex
19 discrimination, but that she was dismissed for the reasons I
20 outlined. Thank you for your attention.

21 (Whereupon, the opening statements were
22 concluded.)

23

24

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Plaintiff's Closing Argument

18

1 SEPTEMBER 11, 2002

2 CLOSING ARGUMENTS

3 MR. PRINGLE: Good morning, ladies and gentlemen
4 of the jury. We have been here a long time, and I want to
5 again thank you for the time and for your participation in
6 this process. This has taken two and a half days of your
7 time, and we greatly appreciate it.

8 I did watch you, and I did notice you were
9 listening very intently, and I greatly appreciate that, and
10 my client appreciates that. Because your time is valuable,
11 I am going to get straight to the point here.

12 This issue -- the issue before you, the case
13 before you is whether or not Ms. Wilhelm was retaliated
14 against in violation of Federal Statute VII and State
15 Statute of Pennsylvania Human Relations Act.

16 In order to prove our case, we had to show a
17 number of things. The first thing we had to show is that
18 there were complaints. This is the critical issue here.
19 Actually, all the issues are critical, but this is one of
20 the main critical points here.

21 Ms. Wilhelm testified that she complained to her
22 Director Major Morris about discrimination with respect to
23 assignment of cars, that she thought it was unfair that the
24 male employees all had cars, and she did not.

25 She testified that she told Major Morris that she

Plaintiff's Closing Argument

19

1 didn't think it was fair that she was the clerical
2 receptionist in the office because she was a woman, and the
3 men in the office were not required to do similar -- perform
4 similar tasks.

5 She testified that she didn't think it was fair
6 that the men in the office were permitted to come and go in
7 the office without accounting for their time, and that she
8 was held accountable for her time. She specifically said
9 that -- she did describe it in terms of gender based
10 discrimination. But she didn't necessarily say this is
11 gender based discrimination, or this is a Title VII
12 violation. She is not a lawyer. She did say it was not
13 fair that I as a woman, I as a female am treated this way
14 and the men in the office are treated another way.

15 What is significant here is Major Morris received
16 it that way. Major Morris filed a complaint on her behalf.
17 She made the complaint to him. He filed a complaint on her
18 behalf in June of 1999.

19 Focus your attention on that complaint because
20 that complaint on its face -- and I am sure the Defendant
21 will point it out -- doesn't say sex discrimination,
22 probably again because Major Morris isn't a lawyer and
23 didn't know he had to use certain magic words.

24 What he did when he talked to Corporal Rain, it
25 was clear he was talking about among other issues sex

Plaintiff's Closing Argument

20

1 discrimination, gender discrimination. Corporal Rain, now
2 Sergeant Rain, acknowledged that he received and he heard
3 that. He acknowledged that he understood those were issues
4 being raised.

5 He acknowledged that he even spoke with the EEO
6 Director Major Virginia Elliot Smith. If there was no EEO
7 issue, why would he go to her?

8 Barbara Wilhelm goes to Major Morris as far as
9 the complaint was concerned. Major Morris goes to -- I am
10 sorry -- the Major talks to Garret Rain and explains that
11 this is gender based discrimination. But it didn't have it
12 in there.

13 You can see from the exhibit -- this is the cover
14 sheet for the report that Garret Rain completed and was
15 submitted to Major Morris -- that one of the people who was
16 assigned to review this was the EEO Officer. So again, all
17 parties knew that there was an equal employment opportunity
18 issue, that there was a discrimination issue here.

19 Did she use the magic words? I am not sure she
20 did, but she did convey to them that she had a problem
21 because she was being treated differently because she was a
22 woman, differently than the men were being treated.

23 With respect to when she talked to Garret Rain,
24 she communicated to him that she believed, among other
25 things, that she should have gotten a classification survey.

Plaintiff's Closing Argument

21

1 I am not sure how Garret Rain accepted that document, but
2 her intent was to say look, do a classification survey. I
3 tried it with the Personnel Office. I tried to ask them to
4 do it. They didn't do it. If you do a classification
5 survey, you will see that I am doing all the clerical work.

6 Again, she is showing she was treated one way
7 because she was a woman, and the men were being treated
8 another way.

9 With respect to that issue as I said before,
10 Garret Rain did go to the EEO Officer to get her guidance
11 recognizing it was an EEO issue.

12 There is another memo here. There is a
13 memorandum that went to Lieutenant Hargas, and Janet McNeil
14 ultimately had access to it when the Systems and Process
15 Review Team came to the office.

16 There's two things I want you to make note of
17 here. The report itself, the memo itself, the
18 September 13th memo, it is unfortunate as we were going
19 through this, the September 13th memo does not have the
20 magic words on it. They don't it well. Ms. Wilhelm
21 acknowledged that part of the process of receiving
22 complaints within the State Police -- and the regulations as
23 Colonel Hikes acknowledged is that you can do a complaint
24 orally. There was no rebuttal to that fact. It was a
25 two-hour meeting.

Plaintiff's Closing Argument

22

5 Lieutenant Hargas testified that he didn't see it
6 in the room. I find that to be incredible. It has yellow
7 state tags on it. I think it is significant that he didn't
8 bring the memorandum which was supposed to be the subject of
9 the meeting. Again, that is not credible, that he did not
10 know that those issues were being addressed, or maybe he
11 didn't care. I don't know. I don't know. But I do know
12 the weight of the evidence suggests that the memo itself was
13 discussed at that meeting and all the items were discussed.

14 Lieutenant Hargas would have you believe that
15 nothing was discussed about a hostile or a harassing
16 environment. It is clearly on the memo. At least, he
17 should have read it. I am not sure what he did with that
18 memo. At least, he should have read it. And it is not
19 credible that Ms. Wilhelm would go to the trouble of
20 drafting this memo and not discuss it.

21 Major Morris's unrefuted testimony was that --
22 Major Morris testified that the issues were discussed, the
23 issues in the memo were discussed, including unearned
24 compensatory time, including harassing and hostile work
25 environment.

Plaintiff's Closing Argument

23

6 One of the things you have to do as members of
7 the jury, and I am asking you to do is consider -- you have
8 to consider credibility. I am asking when you consider
9 credibility, consider the things you heard and the things
10 you did not hear. Consider things that were presented to
11 you and the things that were not presented to you.

15 Barbara Wilhelm also testified unrefuted that she
16 spoke with Janet McNeil and specifically addressed these
17 discrimination issues. Nobody was here to refute that.

18 We also have the testimony of Barbara Wilhelm. I
19 don't think there is any dispute about this -- even the
20 defense would not dispute it -- that there was a memorandum
21 that was sent to Major Morris, that was copied to Col.
22 Evanko and the EEO Director, Major Virginia Smith Elliot.
23 You are going to see them when you review the documents.
24 Colorado Evanko was copied on that. The EEO Director was
25 also copied on that. That was dated January 3rd.

Plaintiff's Closing Argument

24

1 There was another memo dated January 3rd in which
2 those two parties, Corporal Evanko and Major Virginia Smith
3 Elliot were also copied. So we have complaints to Major
4 Morris. We have the complaints that Major Morris made to
5 Rain understanding and receiving a complaint of
6 discrimination.

7 We have Ms. Wilhelm's complaint to Janet McNeil
8 alone. We have Ms. Wilhelm's complaint to the Systems and
9 Process Review Team, Hargas and McNeil, according to Wilhelm
10 and Major Morris where discrimination was discussed. And we
11 have the documents going to Col. Evanko through Major
12 Morris -- I am sorry -- going to Col. Evanko and going to
13 the EEO Officer.

14 Lastly, we have the unrefuted testimony of Ms.
15 Wilhelm that she also spoke directly with the EEO Officer
16 making these same discrimination complaints. You never
17 heard from her today or any time.

18 Where is Major Smith Elliot? She is not here. I
19 believe she is not here because they didn't want to present
20 her testimony probably because she was not permitted to do
21 her job.

22 If you look at that chart over there -- I know it
23 is hard for you to see. Is it okay if I approach?

24 THE COURT: Yes.

25 MR. PRINGLE: It has been sitting over here all

Plaintiff's Closing Argument

25

1 the time. I know it is hard for you to see. What I want
2 you to recognize is all roads lead to Lieutenant Col. Coury.

3 THE COURT: Keep your voice up. Vicki has to
4 hear you.

5 MR. PRINGLE: All roads lead to Lieutenant Col.
6 Coury. The complaint was filed with the Systems and Process
7 Review Team. Eventually, it would get to Col. Coury.

8 If the Complaint was filed with Internal Affairs
9 Division, it goes through the Bureau Director and gets to
10 Col. Coury. If the complaint is filed with the EEO Officer,
11 it gets to Col. Coury.

12 Just make a note of that. I am not going to
13 address that issue specifically right now. I want you to
14 make a note of that.

15 What is more important here at this point just
16 showing the complaint was made is that Major Morris,
17 Corporal -- I am sorry. There was a meeting with Col.
18 Major Conley at the time. Now that meeting with Major
19 Conley is where that memo of September 13th was specifically
20 addressed. He was directed to have a meeting with
21 Lieutenant Col. Coury.

22 Who was at that meeting? The Officer and legal
23 counsel. If you don't have a discrimination complaint, why
24 call the EEO Officer?

25 Two, according to Col. Conley -- Lieutenant Col.

Plaintiff's Closing Argument

26

1 Conley, there were two meetings held with respect to that
2 complaint. There were two meetings where they discussed her
3 memo.

4 Why would you discuss that and include the EEO
5 Officer if you don't have an EEO issue? Of course, they
6 knew it was an EEO issue, and they accepted it as such.

7 Lieutenant Col. Conley acknowledged that the document was a
8 complaint.

9 So we have Major Morris. We have Corporal Rain.
10 We have Lieutenant Coury. We have at that time Major
11 Conley. We have two complaints going -- two memos from
12 Barbara Wilhelm going to the EEO, and we have Barbara
13 Wilhelm going to the EEO Officer directly. All of that
14 information went directly to the EEO Officer.

15 Guess what you didn't see? You didn't hear from
16 the EEO Office or didn't see the EEO Officer. That is
17 significant. They didn't want you to talk to her. We put
18 in all that to say there was a complaint. There were
19 several complaints.

20 We didn't get into whether the complaints were
21 valid. We are not supposed to. That is why we didn't
22 because we didn't want to. We couldn't. We were not
23 supposed to. That is not what this case is about.

24 We are supposed to present to you relevant
25 evidence. This case is about retaliation, not about the

Plaintiff's Closing Argument

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1 individual complaint of retaliation.

2 On the issue of retaliation, we have to show you
3 the complaints. You don't have to decide and you should not
4 consider whether or not any of the complaints were valid, or
5 whether she was overly sensitive, or whether she
6 misperceived things, or whether there was good reason for
7 any of this to be happening.

8 Did she perceive herself as having EEO issues and
9 filed a complaint? We think we have shown that.

10 The next thing we have to show is that there was
11 some kind of adverse employment action. I think that is
12 pretty easy. We showed you -- and there is no dispute --
13 the dismissal letter, the testimony of Ms. Bonney, the
14 testimony of Ms. Polec.

15 Barbara Wilhelm was dismissed, and her personnel
16 record recorded that she was dismissed. It doesn't get much
17 more adverse than that. She lost her job, and they
18 dismissed her. She lost her job through a dismissal.

19 We have to also show you there is some kind of
20 relationship between the filing of the complaints and the
21 adverse action. We have to show you that she filed the
22 complaints, they dismissed her, and that they dismissed her
23 because of the filing of the complaints.

24 I think it goes without stating, but I do have to
25 show you evidence, and we did present evidence. What we

Plaintiff's Closing Argument

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1 showed you is they don't like receiving complaints. They
2 just don't like it.

3 How do you know they don't like receiving
4 complaints? Well, the unrefuted testimony was that all
5 those complaints were filed, except for the Morris one -- I
6 am excluding that issue -- Ms. Wilhelm never received any
7 acknowledgement that they got the complaints.

8 According to Col. Hikes, the regulations require
9 -- and you will have the regulations in front of you -- the
10 regulations require some kind of receipt of the complaint.
11 Col. Hikes also told you that a complaint can be made
12 orally. It didn't have to be presented in writing.
13 Eventually, it had to be put in writing, but it didn't have
14 to be presented in writing.

15 So is there an excuse for not getting a receipt?
16 According to the undisputed testimony of Col. Hikes, there
17 is no good reason for not giving the complaint and the
18 acknowledgement or receipt of the complaint.

19 So almost in every case, they did ignore Ms.
20 Wilhelm. Even in the case of the Col. Conley meeting with
21 the EEO Officer and legal counsel, they never got back to
22 Ms. Wilhelm. The issue died. She never heard from them.

23 Think about what she got. They never followed
24 their own procedure. Why? They wanted it to die. They
25 didn't want to address it.

Plaintiff's Closing Argument

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1 Maybe they don't like litigation. They have a
2 lot of issues about litigation. They don't like complaints.

3 Their problem was that Major Morris actually
4 followed the procedure and filed the complaint. Again,
5 going back to my issue of complaints and whether they
6 received complaints, according to the undisputed testimony
7 of Lieutenant Col. Coury, Major Morris came to him and said
8 I have some problems in my office. I am getting complaints
9 from Barbara Wilhelm. What do I do about it? He said file
10 a formal complaint. So again just to note, Col. Coury was
11 aware of that.

12 Major Morris listened to him and filed a
13 complaint on behalf of Barbara Wilhelm. Again, did it say
14 discrimination gender, those words on there? No, there
15 weren't, but it was discussed.

16 Let's see how much they didn't like people filing
17 complaints. How did they handle this complaint? What you
18 are going to see when you get these documents is that on the
19 document that is Plaintiff Exhibit 55, it is a complaint
20 document. You will see it is in handwriting. You will see
21 what it looks like.

22 Look on that complaint document. They received
23 this complaint on June 7th, 1999. I guess according to
24 everybody, Corporal Rain, who was investigating it sometime
25 in June -- which would make you think they were right on top

Plaintiff's Closing Argument

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1 of things and wanted to get this matter taken care of except
2 here is what happened. Corporal Rain was sort of like a
3 scout. Corporal Rain was trying to figure out -- they
4 wanted Corporal Rain to find out whether they had a case,
5 whether litigation was an issue. That was their main
6 motivation, worrying about if they might have litigation,
7 not protecting people about their complaint.

8 Corporal Rain interviewed Major Morris and found
9 out there were some gender issues. He checked with the EEO
10 Officer to find out if there's real issues here, do we have
11 a problem here.

12 He talks to Barbara Wilhelm. She presents him
13 with what he believes to be pertinent information which you
14 will find in the June 21st memo where he talks about
15 Wilhelm's classification. Corporal Rain takes that
16 information. She is still ready to work with him.

17 During that conversation, she says do you have to
18 tell the other people, do you have to talk to anybody, etc.?
19 Yeah, I do. Wait a minute. Wait a minute. He tells her
20 that Col. Coury is going to get this information and higher,
21 that he has to turn this over. Everyone knows that they are
22 friends -- that they were good friends.

23 Major Morris knew they were good friends. Major
24 Morris knew they were good friends so much so that he didn't
25 bother to perform a performance evaluation because the only

Plaintiff's Closing Argument

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1 kind he could do was a bad one, and he knew it was pointless
2 for him to do one.

3 Barbara says what is the point of this? If you
4 were in the same situation, you wouldn't have followed
5 through. It looked fruitless. So why bother? She
6 expressed that to Corporal Rain. She also expressed to him
7 I don't think I am getting any satisfaction through this
8 process. I might go to outside sources.

9 So what happens? The Corporal reports that to
10 his superior, including Lieutenant John Brown. Guess what
11 happens a few days after he reports that after the meeting?
12 Col. Coury calls John Brown, also Major Conley. We better
13 call Simmers.

14 Lieutenant Brown wants you to believe that the
15 reason that it was important to call Simmers was because he
16 wanted to get on top of this investigation. We really
17 wanted to do something here, and we have to keep talking to
18 Barbara Wilhelm to find out what the specifics were.

19 What is the real issue? She didn't make a note.
20 They could have gotten it from Major Morris. That is
21 assuming they really wanted to do that.

22 As soon as they found out they couldn't get any
23 information from her, they should have gone on with their
24 investigation.

25 Lieutenant Brown makes up some excuses why they

Plaintiff's Closing Argument

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1 wait a month later to contact Captain Simmers. The fact is,
2 they never wanted to talk to Captain Simmers. They never
3 needed to talk to Captain Simmers. I am going to ask you to
4 strongly -- I am begging you look at the memo dated July 20,
5 '99.

6 That memo records -- and we have testimony
7 corroborating it -- it records that Col. Conley called the
8 Major only and said we better go -- somebody go talk to
9 Simmers. Can we talk to Simmers? Lieutenant Brown is
10 saying I got a call from Lieutenant Col. Coury. We better
11 -- we got to talk to Simmers because if we dismiss this, it
12 is not going to look good in litigation. It is going to
13 look bad. We don't want to look bad.

14 When I talked to her, we know after the hearing
15 comes back, Barbara Wilhelm is talking about going to an
16 outside agency. We might get scrutinized for this. We
17 might get scrutinized. We better start talking to Captain
18 Simmers.

19 I told you a little earlier that I thought the
20 whole thing was a scouting mission. Look at the document
21 showing the complaint. They have acknowledged they did not
22 talk to Simmers until around the 25th of August. I don't
23 remember the date, but it is around that time.

24 Also look at when the complaint was actually
25 assigned, officially assigned. It wasn't until August 25th.

Plaintiff's Closing Argument

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1 Why did they wait so long? Because Rain was just finding
2 out whether there were any litigation issues or whether
3 there was a valid claim. They weren't trying to investigate
4 her complaint. There is no excuse if you are going to get
5 on top of it.

6 If you receive it on June 6th, assign it on
7 June 6th or 7th -- I am sorry -- received it on June 7th,
8 assign it on June 7th or 8th, that was a weekend in June.

9 Why did they wait two months later while he is
10 investigating it? He was a scout. They were checking to
11 see if they had any liabilities. They weren't trying to
12 protect her. They had no interest in doing that.

13 Since she has gone to outside agencies and they
14 are going to be scrutinized, we have to do something so we
15 will do some kind of investigation. That is what Garret
16 Rain did, some kind of investigation.

17 There is another way around this. The other way
18 around it is we will follow this investigation so late that
19 they can't do anything about it. Remember the issue of
20 maximum adjudication date. You will see that on Exhibit 56.

21 That is significant. Because if you wait long
22 enough, even if we have to find that Simmers did something
23 wrong, we can't do anything about it. Col. Coury's buddy is
24 covered. No problem.

25 And how did they do it? They gave it to Major

Plaintiff's Closing Argument

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1 Morris with less than a week or approximately a week to
2 review it.

3 The report itself is not in evidence. But you
4 may have seen Corporal Rain holding it. It is a pretty
5 thick document. They gave him a week to review that
6 particular document.

7 Major Morris said I don't have enough time to
8 review this. They knew that. He also said why are you
9 giving this to me? I think it is a problem for me to
10 adjudicate this matter when I filed the complaint. You
11 think about it. It doesn't make sense. I am initiating a
12 complaint, and you want me to review it.

13 It is a matter of integrity. Major Morris had
14 some integrity. He said I think it is a problem for me to
15 review this document. You've got to think if they want to
16 establish something, why would they give it to Major Morris?
17 He is the one that wrote it. If they would give it back to
18 him, what would you expect to happen?

19 There's two issues. There is a conflict here.
20 He has integrity. One thing they knew is conflict or not,
21 integrity or not, he didn't have enough time. Major Morris
22 said may I have more time. Lieutenant Col. Coury says sure,
23 no problem. We can get you more time. We get more time all
24 the time. We will go to the union and get more time.

25 Did he get back to him? Never got back to him.

Plaintiff's Closing Argument

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1 What did Col. Coury say when he got up here? Nothing. So
2 the plan worked.

3 Nothing happened to Simmers. It never became an
4 issuc. We just say he failed to do it on time. It was his
5 fault. The guy who filed it, it is his fault. If he
6 doesn't have it on time, it is his fault that it didn't get
7 done on time. And Captain Simmers wasn't disciplined.

8 THE COURT: You have about two minutes.

9 MR. PRINGLE: Two minutes. It is a perfect plan.
10 As far as the other issues, as I said, the issue was the
11 issue of the relationship between Col. Coury as you saw and
12 Captain Simmers.

13 The other thing is having shown you that, they
14 have to present you with a nondiscriminatory legitimate
15 reason. I thought they were going to be able to do it. I
16 don't think they did.

17 I am going to ask you to consider the testimony
18 of the key players here, Miller who said on the one hand I
19 didn't get along with her; I did get along with her. She
20 was polite. She was helpful. She got along with Lieutenant
21 Sergeant McNeil. And she got along with Sgt. McNeil, yet I
22 had to get rid of her. I needed a clerk.

23 I looked at the decision, the systems and process
24 review, and I needed a clerk. I really needed a clerk in
25 this office.

Plaintiff's Closing Argument

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1 Look at the Systems and Process Review report.

2 It says the clerk would be nice; you didn't need one. And
3 in fact, if you look over it all, you will see that for a
4 year and a half, for two years, they didn't have a clerk.
5 They were getting along fine. Look at the rating by the key
6 players in the Governor's Office. They were happy with the
7 work of the office.

8 According to Miller, there was a special meeting
9 at the Academy with the Colonel Coury -- Lieutenant Col.
10 Coury to say I need a clerk more than I need Barbara
11 Wilhelm. I know about this employment issue, and therefore
12 I need a clerk more than Barbara Wilhelm and I pick the
13 clerk.

14 According to Col. Evanko, he didn't raise
15 anything about an employment issue. He said Major Miller
16 came to him and said I need a reorganization. Your Honor, I
17 know I have --

18 THE COURT: I will give you five more minutes.

19 MR. PRINGLE: Thank you, Your Honor. Col. Evanko
20 did not testify that there was an employment issue. Col.
21 Evanko did not say there was a meeting at the Academy in
22 which this was explained to him. Col. Evanko didn't say
23 that Col Coury was even present.

24 Col. Coury who testified testified that this had
25 been a long term plan. It was a long standing plan, even

Plaintiff's Closing Argument

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1 talking to Col. Evanko about this for years -- for not
2 years, but for a long time. He wasn't specific about the
3 time frame. In early 2000, they had been talking about
4 this.

5 Now which is it? Was it pursuant to a long term
6 plan, or was it something that Michael Simmers -- I am sorry
7 -- something that he may or may not have come up with
8 because he had a problem with Barbara Wilhelm?

9 Let's look at the problem of Barbara Wilhelm. He
10 said I had to pick her over. I picked a clerk over her
11 because she didn't get along with Ronald Plesco. By the
12 time that Jeffrey Miller is the Director of that office,
13 Ronald Plesco is not in the office. He doesn't even
14 supervise him.

15 How about the fact that Barbara Wilhelm testified
16 without rebuttal and Plesco never heard -- that is another
17 person you didn't hear from, Ronald Plesco -- testified she
18 could do her job without talking to Plesco. And Major
19 Morris testified that each of them could do their jobs
20 without talking to each other.

21 How did they do on the job? Again, Systems and
22 Process Review Report showed outstanding. The office worked
23 very well. Did they get along? No. No dispute about that.
24 They never got along. Somehow Major Morris was able to work
25 that out. Somehow work got done. I don't think it is

Plaintiff's Closing Argument

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1 credible that they had to make a decision her or a clerk.

2 Also, the issue on her versus the clerk goes to
3 the fact he only cited this erratic behavior. If somebody
4 is harassing you, what are you going to do? I don't want to
5 talk to him. I didn't think that is unreasonable. She
6 didn't want to talk to someone harassing her.

7 It's undisputed. She was being harassed by
8 Ronald Plesco. She didn't want to deal with him. Major
9 Morris worked it out somehow. Major Miller couldn't work it
10 out.

11 You look at the testimony of Bonney. Linda
12 Bonney says Col. Coury just said abolish the positions. No
13 discussion about employment issues. He just said abolish
14 the issues. So employment wasn't really the issue.

15 You think back. They had a position in February
16 where somebody actually -- I am sorry -- in 1999 where
17 somebody actually had that clerk position. Somebody
18 actually did it. Somebody was sitting in that office. The
19 office designed a place. They sat for the receptionist.
20 There was a place for her. There was actually a person
21 hired.

22 They never said that that position -- they lost
23 their vacancy. A person leaves. You have a vacancy. What
24 happened to that vacancy? You didn't hear anything about
25 that. All of this is very convenient. All of a sudden,

Plaintiff's Closing Argument

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1 they got to do this employment thing. I think Col. Coury
2 just had it right. They wanted to get rid of the position.
3 They wanted to get rid of the position because they were
4 thinking in early 2000 that they wanted to get rid of
5 Barbara Wilhelm.

6 Now I have to show you some other reasons why I
7 think that is not valid. If you look at all of the
8 circumstances, why didn't they give her notice? They could
9 have. They didn't.

10 Why didn't they give her more time? According to
11 Major Miller, they made a decision to hire a clerk. They
12 had ten days to post it, a week to ten days to interview,
13 and eventually, they hired somebody in mid June.

14 Why didn't they wait the extra six weeks to get
15 rid of Barbara Wilhelm? What was the rush? No explanation
16 as to that. We didn't have any positions.

17 Here is the point. I don't know if you were
18 bored or paying attention, but Col. Coury when he said he
19 talked to Linda Bonney, he said I told Linda Bonney to see
20 if she can find some positions for her because when people
21 are furloughed, that is what we do.

22 So then we talk about whether or not -- so I am
23 saying to you they had other choices also when we talk about
24 the issue of furlough versus dismissal. I think you heard
25 what happened to her. You look at the personnel records not

Plaintiff's Closing Argument

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1 withstanding whatever Mr. Clites said.

2 If you look at the personnel rules, what happened
3 to Barbara Wilhelm, it should have been characterized as a
4 furlough. It was not. And their excuse that it had to be
5 civil service collective bargaining doesn't hold up.

6 If you look at the personnel rules, please, back
7 on page 28, it says you can do that for non managerial --
8 civil service managerial employees. They made it up. They
9 didn't want to do it. They wanted to get rid of her.

10 If you look at how bad they really wanted to get
11 rid of her, they were angry with her. They were angry and
12 sent out a publication saying she has been dismissed;
13 whereas everybody else in the publication were retired or
14 resigned. They said that code, that code was critical. The
15 reason why they did dismissal was because they could put it
16 in their code, not because it was actually a dismissal.

17 The code is critical here. Because if you look
18 at it, you heard Mr. Clites. When he finally admitted what
19 the situation was, Ms. Polec -- when he finally admitted she
20 was actually furloughed, she would have been furloughed, he
21 treated her as a dismissal because they wanted to put an
22 adverse derogatory remark on her record.

23 What was the impact of that? She couldn't get
24 another job for 20 years. She had been a stellar employee,
25 outstanding, and everybody wanted to hire her. Now all of a

Plaintiff's Closing Argument

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1 sudden, she can't get a job. She doesn't even get a call
2 back.

3 Now what was the damage done here? It was damage
4 to her reputation, the humiliation of being forced to leave
5 the office the same day under escort -- under escort. There
6 was the loss of her pension, the opportunity lost and her
7 career, the loss of the independence of her work.

8 For two years, she has not been able to get a job
9 because of the damage they have done to her. She has lost
10 back pay. You have a document indicating how much back pay.

11 How do you measure the loss of your reputation?
12 How do you measure the loss of the humiliation, the pain and
13 suffering that comes from humiliation and the fact that
14 everybody knows that this happened? They made an example
15 out of her.

16 We are asking you to also make an example out of
17 her. We are asking you to show them that you cannot do this
18 to employees. When someone files a complaint, you don't
19 worry about the legalities. You worry about addressing the
20 complaint. You don't retaliate against them because they
21 asserted their rights.

22 We are simply asking you to do what is the right
23 thing and come back with a verdict, a fair verdict. And we
24 believe that fair verdict is in favor of Ms. Wilhelm in
25 finding liability and damages liability for the Pennsylvania

Defendants' Closing

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1 State Police and damages -- appropriate damages and fair
2 damages for Barbara Wilhelm. Thank you very much.

3 THE COURT: Ms. Forney, you have an additional
4 ten minutes after the half hour since Mr. Pringle went to
5 40 minutes.

6 MS. FORNEY: Thank you, Your Honor. Ladies and
7 gentlemen, it has been a long two days. I would like to
8 echo Mr. Pringle's thanks to you. You have been very
9 attentive. I know that you have heard a lot of information
10 in a rather short period of time, and I know that both of
11 the parties appreciate your seriousness about this case.

12 This case is about whether Plaintiff was
13 dismissed because she complained about discrimination. I
14 think there are two things you need to be concerned about.
15 Number one, did she make a complaint about discrimination;
16 and number two, is there a connection between that complaint
17 and her dismissal.

18 Now in my opening I said yes, she did make a
19 complaint. And that complaint was the January 3rd, 2000
20 memo that she wrote to Major Morris on the eve of his
21 retirement. And in that memo, she complained about a
22 discriminatory practice in connection with compensatory
23 leave. And she used the word discriminatory practice, and
24 she used the word selective preferential treatment of male
25 employees.

Defendants' Closing

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1 Now that pretty clearly says I am complaining
2 about discrimination I think we would all agree about that.
3 I agree about that. She made other complaints which do not
4 use the words discrimination. They do not use the word
5 disparate treatment. They do not use the words I am treated
6 badly because I am a woman.

7 Mr. Pringle referred to magic words. There
8 aren't magic words. There is not a particular formula that
9 you have to use. But words are important, ladies and
10 gentlemen. And discrimination means that you are being
11 treated differently based on your class.

12 In this particular case that class happens to be
13 being a woman. You have to convey that idea.

14 Now Ms. Wilhelm said she made other complaints.
15 You heard a lot of evidence about it. You heard evidence
16 about written complaints and oral complaints. Let me deal
17 with the written complaints first. You are going to have
18 the documents, and I urge you to look at them.

19 One written complaint that she said she made was
20 to the Personnel Bureau. And this is a Plaintiff exhibit.
21 And this complaint was made in December of 1998 in
22 connection with her request for reclassification.

23 In that complaint, what she characterized as a
24 complaint, she complains that Captain Simmers was making
25 malicious statements about her serving no legitimate

Defendants' Closing

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1 purpose. She doesn't say he is doing this to harass me
2 because I am a woman. She doesn't say he is doing this to
3 me because I am a woman. She is complaining that he is
4 making inappropriate statements.

5 I think there is a difference between the two.
6 You can complain about somebody doing something
7 inappropriate, breaking rules, engaging in misconduct. That
8 is not the same thing as discrimination. The reason the
9 conduct is being carried out is what may make it
10 discrimination or not, and that is not articulated.

11 What other written complaints does she say she
12 made? She says she gave two documents to the BPR
13 investigator Corporal Rain. You are going to have those
14 documents. I urge you to look at those as well.

15 The first one is a June 21st, 1999 memo. And you
16 heard it read -- portions of it read and testimony. And the
17 stated purpose of that memo was to request a classification
18 survey of the office because Captain Simmers is not
19 performing as he should and doesn't possess knowledge,
20 skills, etcetera. That is the stated purpose of the memo.
21 It does not say I am being discriminated against because I
22 am a woman; I am being treated differently because I am a
23 woman. That is not the purpose of the memo.

24 Now, ladies and gentlemen, Ms. Wilhelm told you
25 that she was an educated woman. She has held responsible

Defendants' Closing

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1 positions in government. She has even been an investigator.
2 She is obviously capable of articulating her thoughts, and
3 she didn't do it. It is not there.

4 And she certainly demonstrated an ability in her
5 January memo to clearly express what she wanted to say which
6 was I think there is discrimination in connection with
7 compensatory leave.

8 Again, she doesn't say it in this memo that she
9 gave to Corporal Rain. She gave him a second memo. And
10 actually it is in the form of a letter. You will see that
11 as well. It is dated in July. And it is a very short
12 letter. It refers to a complaint under the Whistleblower
13 Law. And then it says she is going to present this to some
14 other entity in state government.

15 Now in her testimony, Ms. Wilhelm said well, to
16 me, the Whistleblower Law included a whole lot of things,
17 waste, fraud, abuse and discrimination. Well, if the
18 Whistleblower Law deals with a lot of things, then certainly
19 a reference to the Whistleblower Law would not tell the
20 person receiving that document, this is a complaint about
21 discrimination. That person could certainly conclude that
22 this was a complaint about something else, like waste, or
23 fraud, or misconduct, breaking rules.

24 Finally, we get to a written complaint, what she
25 characterizes as a complaint, that was given to Lieutenant

Defendants' Closing

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1 Hargas that resulted in a meeting that was held to review
2 her concerns. And again, look at the language.

3 The language talks about misconduct, breaking
4 rules, being incompetent for a job all in reference to
5 Captain Simmers apparently. But it doesn't say I am being
6 harassed because I am a woman. It doesn't say I am being
7 treated unfairly because I am a woman. It doesn't say I am
8 being treated differently because I am a woman. These are
9 not difficult concepts.

10 The idea of discrimination has been something
11 that we have been dealing with in our society for a number
12 of years now. I think most people know what it means. It
13 means you are treated differently because -- because you are
14 black, because you are a woman, because you are over forty,
15 because you are disabled. That is the key. And that key
16 was never present in any of these written documents that she
17 presented.

18 Now she says she made a lot of oral complaints as
19 well. And those oral complaints really weren't corroborated
20 very well by the witnesses that you heard. The only person
21 who said that he thought maybe what she was complaining
22 about was gender discrimination was Major Morris. You
23 remember that.

24 But when he was pressed about well, was sex
25 discrimination discussed in the meeting with Lieutenant

Defendants' Closing

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1 Hargas, did she say to you sex discrimination, he said well,
2 no, I don't think that was really what was said.

3 Now, let me move on to the second thing that you
4 have to think about. And that is is there a connection
5 between all of this and her dismissal?

6 Now I did say there was one written complaint
7 about discrimination. Let me address that one first.

8 That was the complaint about compensatory leave.
9 And she copied in Commissioner Evanko on that memo. And it
10 is clear that she -- that Commissioner Evanko authorized the
11 reorganization of the office which led to her dismissal. So
12 if the question is is there a connection between that memo
13 that Commissioner Evanko received and her dismissal, I think
14 not.

15 Why not? For one thing, Col. Evanko immediately
16 responded to that memo by ensuring that her supervisor knew
17 what the appropriate policies for compensatory leave were,
18 and he did that very promptly. And then he said it looks to
19 me like she is trying to raise an issue of discrimination,
20 and I am directing you to send this memo to the appropriate
21 entities within the State Police so it can be addressed.

22 So certainly, Commissioner Evanko did not exhibit
23 any reluctance to receive that complaint or any reluctance
24 to deal with it. He did what he was supposed to do within
25 the structure of the State Police. He acted on it. He

Defendants' Closing

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1 directed it be sent to the Bureau of Professional
2 Responsibility and to the Equal Opportunity Employment
3 Office.

4 There is something that you need to remember
5 about that memo. That memo was directed to Major Morris on
6 the eve of his retirement, and it was a complaint about the
7 way he was handling the compensatory leave within the
8 office.

9 On the date that Commissioner -- soon after
10 Commissioner Evanko sent his memo reiterating the policy on
11 compensatory leave and directing that the memo be forwarded
12 for further action, Major Morris was retired. He was gone.
13 There was nothing to be done with Major Morris because he
14 wasn't there anymore.

15 Now the other thing about connection between that
16 memo and the dismissal in this case is remember how the
17 dismissal came about? Major Miller was the new Director of
18 the office. He was the new guy in town, so to speak. There
19 was absolutely no evidence presented that he knew about any
20 complaints Ms. Wilhelm had made.

21 He was the new supervisor in the office. He was
22 coming in fresh. There was absolutely no evidence that he
23 was aware of any of this.

24 He came in with a mandate, and it was a mandate
25 from the Governor's Office which folks in state government

Defendants' Closing

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1 tend to take pretty seriously and a mandate from his
2 superior officer, the Commissioner of the State Police. We
3 want your office to work together to communicate with the
4 policy people, to work hand in hand with the policy people
5 and move forward with the agenda of the State Police and the
6 administration. This is your mandate. He came in and
7 intended to go carry out that mandate.

8 And for a while in the office, he had confidence
9 that he would be able to do it with the staff that he had
10 until the incident that he described to you came up with Ms.
11 Wilhelm. She made it clear to him that she wasn't willing
12 to speak with the Policy Director, the person that Major
13 Miller had been directed to work with, cooperate with, make
14 sure his office communicated with him.

15 This was a problem. Did Major Miller immediately
16 say that is it? No, he didn't. He talked with Ms. Wilhelm.
17 He tried to say and make clear to her his expectation and
18 his need. I need you to be able to work with this person.
19 I don't know what happened in the past, but let's put that
20 behind us. Let's go forward. Not an unreasonable request
21 for a supervisor to make.

22 And she just abruptly told him I can't do that.
23 And in no uncertain terms she reiterated I am not going to
24 talk to this man.

25 Major Miller made a decision. He made a decision

Defendants' Closing

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1 this isn't going to work out. He went to the Commissioner
2 and said I want to reorganize my office. I need clerical
3 help, which is something that he had been concerned about
4 early on, the need for clerical help. He explained to you
5 why.

6 However Major Morris ran the office. Major
7 Miller liked to dictate things, did dictate things, thought
8 it would be more efficient if he could have some clerical
9 help to assist him with the correspondence and the
10 documentation that that office had to issue.

11 And he moved on that. And he moved on that
12 because he realized that Ms. Wilhelm was not going to be
13 operating in the office the way he needed her to operate.
14 And if she was removed from the office, he would have a
15 vacancy which would allow him to bring in a clerical
16 employee.

17 That is what he said to the Commissioner, I need
18 clerical help. Ms. Wilhelm is not going to work out because
19 she has made it clear to me that she is not going to do what
20 I need her to do. The Commissioner accepted that
21 recommendation and authorized the reorganization of the
22 office.

23 Okay. Now when you are looking at the question
24 of retaliation, you can also look at is there some other
25 indication that the State Police had some sort of animosity

Defendants' Closing

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1 toward Ms. Wilhelm? Did they have animosity toward Ms.
2 Wilhelm? And Mr. Pringle talked to you at length about that
3 very issue.

4 Well, let's, since I have been talking about the
5 dismissal, let's talk about how the dismissal was handled.
6 The Commissioner didn't say dismiss Ms. Wilhelm. The
7 Commissioner said I authorize the reorganization of that
8 office.

9 When Col. Coury spoke to Ms. Bonney, who is the
10 person who is responsible for making all these things happen
11 in the State Police, he didn't say dismiss Ms. Wilhelm. He
12 said handle this the way we usually handle things. The
13 office is being reorganized.

14 What did Ms. Bonney do? Did she immediately
15 write out a letter saying you are dismissed? No. She
16 looked for other positions for her. Unfortunately, there
17 were none. But she looked for other positions for her.

18 If you are antagonistic toward someone, it is not
19 something that you do. It is not something that the State
20 Police had to do. Remember, Ms. Wilhelm was an at will
21 employee. That meant she didn't have union protection. She
22 didn't have a right to bump into another job. She wasn't a
23 civil servant. She didn't have a right to a job someplace,
24 and they had to find it for her.

25 But nonetheless, they looked for one for her.

Defendants' Closing

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1 These are not the actions of an organization that is out to
2 retaliate against someone.

3 Next let's take a look at the dismissal letter.

4 Yes, it says dismissal. Nobody likes to be dismissed, but
5 you heard testimony as to why that term was used.

6 You heard from Ms. Polec who said we don't
7 furlough non civil servants. We don't furlough non contract
8 people. You heard the same thing from Ms. Bonney. Then you
9 heard the same thing from Mr. Clites.

10 Now Mr. Clites is not a State Police employe you
11 remember. Mr. Clites is with the Office of Administration
12 which he explained was a Commonwealth agency. And that is
13 the agency that runs the personnel transaction system that
14 has all these codes. And you remember he said that he and
15 his staff were the people that trained personnel folks in
16 the agencies about how to use those codes.
17 And he said the Commonwealth doesn't furlough non civil
18 servants, doesn't furlough contract people.

19 Now Mr. Pringle came back and showed him the
20 personnel rules, and Mr. Clites and Rose Polec both said
21 yeah, the personnel rules say what they say. You heard
22 those definitions.

23 Well, folks, apparently the Commonwealth practice
24 is not in accord with the personnel rules. Now either the
25 personnel rules are not drafted very well and fully explain

Defendants' Closing

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1 the use of the term furlough or the Commonwealth practice
2 doesn't accord with the personnel rules.

3 But the important point is that the State Police
4 were not out on some frolic and detour when they used that
5 term to describe Ms. Wilhelm's separation. They were using
6 the term that the Office of Administration told them through
7 Mr. Clites' Division who went out and trained agencies on
8 what they were supposed to use. And what they were supposed
9 to use for an at will employee who was not a civil servant
10 and who did not have proper contract protection was
11 dismissal.

12 Now let's just spend one more minute on that
13 dismissal letter. And you will have a chance to look at it.
14 What the dismissal letter says is Ms. Wilhelm was dismissed
15 due to reorganization. It was required by the
16 reorganization of her office.

17 It doesn't say she was dismissed because she
18 couldn't perform her job. It doesn't say she was dismissed
19 because she engaged in misconduct. It does not say she was
20 dismissed because she refused to communicate with someone
21 that her boss wanted her to communicate with.

22 Now as to the last part, the State Police could
23 have legitimately put that in there because that was part of
24 then Captain Miller's recommendation and reason. But they
25 didn't put that in there. They put down it was due to

Defendants' Closing

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1 reorganization of the office.

2 Now as I said, nobody likes to be dismissed.

3 Nobody likes to have that on their record. But the fact is
4 people do get dismissed, and people get dismissed for a
5 variety of reasons.

6 You heard Ms. Bonney talk about hiring people who
7 had been dismissed and what she has done in the past when
8 confronted with someone like that. What she said is you
9 look at the circumstances of the dismissal. Being dismissed
10 because of a reorganization is not a black mark on your
11 record.

12 And Ms. Wilhelm had a letter from the State
13 Police explaining why she was dismissed. That was a letter
14 she could present to employers and explain I was dismissed
15 because they reorganized. And there is no reason that a
16 reasonable employer wouldn't take that into consideration.

17 At the time, if the State Police were out to get
18 Ms. Wilhelm, they wouldn't have given her a letter like
19 that, but they did. Now what did the State Police do with
20 the complaints Ms. Wilhelm made? Mr. Pringle talked an
21 awful lot about the Bureau of Professional Responsibility
22 investigation and the complaint that Major Morris had made.

23 What did the State Police do? They investigated
24 it. You remember Sgt. Rain talked about it. How did he go
25 about doing an investigation? The first thing he did within

Defendants' Closing

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1 a few days after he received it was contact Major Morris who
2 made the complaint. He talked to Major Morris. He said
3 what is it that you have? And he took that information, and
4 he did the next logical thing. He tried to talk to the
5 person who was the victim of this conduct, at least the
6 alleged victim of this conduct to say what is it, what is
7 going on, tell me.

8 That is a reasonable thing to do. And she didn't
9 want to tell him. And he met with her again. And she still
10 didn't want to tell him.

11 So what did he do? He talked to Captain Simmers.
12 Now Mr. Pringle makes a great deal out of the time lapse. I
13 don't think it is such a big deal, ladies and gentlemen.

14 You heard testimony that Corporal Rain did not
15 have one investigation to do at a time. He had multiple
16 investigations to do. As with most of us, we are very
17 seldom allowed to do one thing. We have to juggle. I guess
18 multi-task is the term that is popular now.

19 We have to multi-task. We have to juggle
20 everything. And he was juggling, but he did talk to Captain
21 Simmers. And in talking to Captain Simmers, he took other
22 steps to try to figure out whether this complaint was
23 supported.

24 And Mr. Pringle talked about the thickness of the
25 document. Well, I think that speaks to thoroughness with

Defendants' Closing

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1 which he tried to pursue that claim. But understand, ladies
2 and gentlemen, it is difficult to do that when you don't get
3 cooperation from the victim.

4 Put yourself in the shoes of the State Police.
5 You have somebody who is trying to convey something. They
6 seem to be unhappy. But we don't have enough to go on. We
7 just don't have enough to go on. But nonetheless, they
8 carried it through.

9 Now Mr. Pringle talked a lot about whether the
10 State Police knew whether they had a discrimination
11 complaint or not. And I am referring now to all of these
12 other complaints. He points out that the Officer was
13 consulted at the beginning of the BPR; and subsequently when
14 Col. Coury asked that the investigation report, the memo
15 that went to Lieutenant Hargas and some other material be
16 reviewed, that the EEO Officer was involved in those
17 meetings.

18 And Col. Coury told you why the EEO Officer was
19 involved in these meetings. He said I wanted to be sure
20 that we weren't missing anything. They didn't know what
21 they had. I mean it was very difficult to figure out what
22 it was that they had. They wanted to be sure that they
23 weren't missing anything so the EEO Officer was there.

24 And the report that came back from that meeting
25 from Lieutenant Col. Conley was we have looked at it. We

Defendants' Closing

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1 think we have done what we can do given the fact that Ms.
2 Wilhelm doesn't want to cooperate with us.

3 Now why wasn't the EEO Officer here? That is a
4 question that could be asked of the Plaintiff, as much as
5 the Defendant. We presented you Lieutenant Colonel Coury
6 who asked for the meeting. They subpoenaed Lieutenant
7 Colonel Conley. They certainly could have subpoenaed the
8 EEO Officer if they thought that she was going to be helpful
9 to them, but they didn't. They didn't do it. If they
10 thought Sgt. Janet McNeil would have been helpful to them,
11 they could have subpoenaed her as well.

12 We presented Lieutenant Hargas who was at the
13 meeting that Ms. Wilhelm requested specifically to talk
14 about her complaints. We did present him. And at that
15 meeting, he said I don't recall any complaint about
16 discrimination, disparate treatment, being treated badly
17 because of any gender or sex that came from Ms. Wilhelm.

18 What are we left with, ladies and gentlemen?
19 Well, I think we are left with an individual who had a lot
20 of complaints, and those complaints did not go to
21 discrimination, but for the one.

22 Those complaints went to the fact that she
23 thought a co-worker was incompetent, that she thought a
24 co-worker goofed off, that she thought a co-worker broke
25 rules. And those were the purposes of her complaints.

Plaintiff's Rebuttal Closing

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1 What else do we have? We have a dismissal, and
2 that dismissal was not caused by the complaints. That
3 dismissal was caused by two things: The fact that Major
4 Miller strongly felt he needed some clerical help in his
5 office, and the second thing was Ms. Wilhelm's refusal was
6 clearly expressed to him about working with somebody that he
7 had been told by the Governor's Office and the Commissioner
8 that his office had to work with.

9 Ladies and gentlemen, this is not a case of
10 retaliation for complaining about sex discrimination. And I
11 am confident when you have the chance to sit down and look
12 at the documents, look at the evidence, confer with each
13 other about the testimony that you have heard, that is what
14 you will conclude. Thank you very much.

15 THE COURT: Mr. Pringle, you have very limited
16 rebuttal.

17 MR. PRINGLE: Thank you, Your Honor. You know
18 Barbara Wilhelm is a very good investigator and good
19 detective. But to be frank, she is a lousy lawyer. She
20 didn't know the exact words to use and unfortunately didn't
21 use them. She did know how to communicate, but she didn't
22 use the exact form that the writing -- that you use in the
23 beginning or wasn't in the exact form. But she did
24 communicate that meaning as I told you.

25 The issue here is not whether or not a certain

Plaintiff's Rebuttal Closing

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1 form was used or whether even the Police procedures were
2 followed in terms of forms. The law only requires that she
3 express a complaint of discrimination.

4 We believe that the weight of the evidence shows
5 repeatedly that she expressed a complaint of being
6 discriminated against based on the fact she was a woman and
7 that they recognized it and responded to it based on that
8 fact. The EEO Officer was repeatedly asked to be involved
9 in this process.

10 As far as whether or not we believe they were
11 being antagonistic. Let's look at the fact that they were
12 disenchanted. Contrary to what Ms. Forney says the evidence
13 shows Ms. Bonney said she was told by Col. Coury to abolish
14 the position. There wasn't a discussion about complaints,
15 or whether we could convert, or whether or not we need a
16 clerk person or someone else. She was told to abolish the
17 position. Based on that discussion, she recognized that
18 they wanted her to dismiss Ms. Wilhelm.

19 Now according to Rose Polec, the expert on
20 transactions for the State Police, the word dismissal is a
21 derogatory remark in the personnel record despite the fact
22 that Ms. Forney tells you that they weren't trying to hurt
23 her by putting the derogatory remark.

24 Ms. Polec says if it was left up to me and I had
25 a choice, I would rather be furloughed than dismissed. That

Plaintiff's Rebuttal Closing

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1 is important. Nobody likes on their record dismissed. And
2 you know this is just how it works.

3 Well, the fact is that they didn't really do
4 anything to find her a job. They said they looked for a
5 job, but I will remind you there is a list of jobs,
6 vacancies available in Exhibit 60.

7 Exhibit 60 shows there were 13 positions. The
8 civil service positions could have been converted to a non
9 civil service position, or any of the non civil service
10 could have been converted to a position by which they could
11 have put Ms. Wilhelm in that office.

12 If they needed to find employment, they had
13 vacancies they could have manipulated in that system. They
14 did it all the time. They could have converted one of those
15 vacancies and had Ms. Wilhelm stay. The fact is they didn't
16 want Ms. Wilhelm to stay there. They were looking for an
17 excuse to get rid of her.

18 There was no evidence in the record that they
19 attempted to address that issue. They didn't attempt to
20 address that issue because they really didn't want to find a
21 job for her.

22 The personnel rules are the rules that govern
23 personnel transactions. You look at the personnel rules.
24 They know how to say what they want to say. They know what
25 how to bring up civil service issues. Look through the

Plaintiff's Rebuttal Closing

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1 document. It is very clear.

2 Again on page 98, they say you can't furlough a
3 non civil service managerial employe. That is beyond
4 dispute. None of the witnesses testified that the personnel
5 rules were wrong. You didn't hear that. They said the
6 personnel rules were valid, and they acknowledged that.

7 Ms. Forney suggests that they weren't trying to
8 give her a derogatory letter. She could show the letter to
9 any personnel manager and the problem that was on a computer
10 file under work history, she would never get in the door.
11 She would never get the chance to explain anything. All
12 they knew is she was dismissed according to personnel with
13 it being derogatory, and it was never explained as to why
14 she was dismissed.

15 If you saw a derogatory remark, why would you
16 call her? She never got a chance to explain, never got any
17 doors opened to her. She never got a chance to say look at
18 my letter. She didn't need to. If they saw a derogatory
19 remark, why would they call that employe? You wouldn't
20 either.

21 She makes a big deal out of the fact Ms. Wilhelm
22 did not cooperate. She suggested that they did not
23 cooperate. The fact is if you hear that whatever you do is
24 going to be sent up to Col. Coury or Evanko, and that is
25 your friend, nothing is going to happen if I present this to

Plaintiff's Rebuttal Closing

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1 them.

2 At the time, Major Conley received word from Col.
3 Coury by the September 13th memo, they had that. They had a
4 document. Having drafted that document, having met with the
5 people from System and Process Review, it is very clear she
6 was saying whatever I have to do, I am willing to talk about
7 it. I want you to do something about this. I am willing to
8 do that.

9 What does it say in that November 3rd memo by
10 Colonel Conley? She is uncooperative. They have a memo
11 where she is trying to talk to them. She is trying to get
12 somebody to do something. They are not responding. They
13 are the ones that didn't want to cooperate.

14 It is not our responsibility that Major Smith
15 Elliot, the EEO Director, was not here and McNeil is not
16 here. Well, we didn't need them here. Ms. Wilhelm
17 testified as to what took place in those conversations. We
18 are pretty confident they would not even attempt to rebut it
19 so we didn't bother to contact them.

20 In contrast, every other thing that we presented
21 where they could get someone to contradict our statements,
22 they attempted to do it. I am not sure in most cases they
23 were successful, but they attempted to do it.

24 It would have been very simple. Much of this
25 case rests on communication with Ms. Smith Elliot. Bring

Plaintiff's Rebuttal Closing

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1 her in to say no, no one ever talked to me about these
2 issues; no, I did not understand these to be EEO complaints
3 or discrimination complaints; no, Ms. Wilhelm never talked
4 to me about these issues. If they had that to present, they
5 would have presented it to you.

6 I promised to be brief and will be. One other
7 point is the conversion with respect to jobs. Ms. Bonney
8 did testify that within six months of Ms. Wilhelm's
9 dismissal, a position as an intelligence investigator was
10 available. And in fact, it was offered and accepted by
11 Captain Simmers' daughter.

12 They could have called her. Did they have a
13 legal obligation to do so? No. But it seems to me that it
14 is reasonable to infer that they knew that these issues --
15 these issues were going to become available. They knew that
16 she had just been dismissed. And they could have called her
17 merely out of courtesy. This goes to their intent to harm
18 her and that she couldn't get further employment. Thank you
19 very much.

20 (Whereupon, the closing arguments were
21 concluded.)

22

23

24

25

1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the notes
3 taken by me on the trial of the above cause, and that this
4 copy is a correct transcript of the same.

5

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Vicki L. Fox, RMR

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Vicki L. Fox, RMR

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Official Reporter

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